THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.16490 of 2006

Dated 11-08-2006

Between:

G. Rajkumar.

..Petitioner

AND

The State of A.P., rep. by its Secretary,
Revenue (Endowments-I), Hyderabad and two others.

..Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.16490 of 2006

O R D E R:

The petitioner assails tender notice No.B5/2029/2006, dated

27-07-2006 issued by the third respondent-Devasthanam inviting tenders, *inter alia*, for shop No.12 of Yogananda shopping complex for the period from 01-09-006 to 31-08-2009 or for a period of three years from the date of handing over of the shop.

The petitioner is pursuing toys business in shop No.12 of Yogananda shopping complex at Yadagirigutta since February, 2001. He claims to have become a lessee in respect of said shop for the year 2001 pursuant to an auction at which he was the highest bidder and the shop allotted to him vide third respondent's proceedings dated
21-01-2001. The lease was for Rs.1,250/- per month for a period of one year from February, 2001. The lease was also approved by the Commissioner of Endowments by proceedings dated 06-01-2001.

According to the petitioner, despite the lease being only for a period of one year, which ended by February, 2002, he was neither evicted, granted extension of the lease, nor a fresh auction held or any other person granted a lease. Only the lease amount was enhanced and he is paying the enhanced lease amount. He states that the third respondent-Devasthanam is also accepting the enhanced lease amounts from him year after year and that he is not in default of the lease amount. He thus, claims to be a tenant in perpetuity on the basis of the acquiescence of the third respondent-Devasthanam and the indifference of the respondents 1 and 2 to the statutory requirement and obligation that public auction for grant of leases of non agricultural properties belong to the third respondent-Devasthanam should be held periodically and a competitive return obtained for the properties. He further states that he is a graduate unemployed and is eking out his livelihood by the business in shop No.12 since five years. As the third respondent has permitted him to continue in the business for five years, he has come to depend on the said business alone without pursuing any other livelihood. The petitioner, in substance, pleads a prescriptive right to continue in the shop on account of the illegal conduct of the third respondent in permitting him in the premises and by collecting periodical rents without any authority of law or any legal instrument.

On the aforesaid factual matrix, the petitioner asserts that the impugned conduct of the third respondent-Devasthanam in notifying shop No.12 by way of public auction is arbitrary, illegal and invasive of his right to business and

livelihood.

The learned Government Pleader for Endowments placed for the perusal of this Court a copy of the statutory rules known as the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Immovable Properties and other rights (other than agricultural lands) Leases and Licenses Rules, 2003 (for brevity 'the Rules'). These Rules have been issued by the Government in exercise of the powers conferred under Section 82 read with Sub-Section (1) of Section 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter called 'the Act'). Rule 3(1) of the Rules ordains that all leases or licenses shall be made by way of public auction. The proviso to Rule 3(1) of the Rules enables the Commissioner, on a request made in writing by the Executive Authority, to permit the lease of any property or right other wise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. In the circumstances, the Commissioner is permitted to grant permission to the Executive Authority to grant lease otherwise than by way of public auction.

Since August, 2003, the above Rules are in force and on principle and authority even earlier, endowments properties are to be leased out only by a transparent and public process, preferably by a public auction or by following tendering process. Private arrangements of Executive Officers of temples or other Endowment officials conveying, transferring or granting leases of endowment properties are offensive public conduct and offend the morality of law. They also constitute grave misconduct as such administrative practices have the potential of enabling nepotism, arbitrary and irrational conduct of public authorities. In the context of the constitutional scheme, the Government or the Endowments Department are mere trustees exercising the police power of the State to regulate and ensure proper management of endowment properties. Endowment properties do not belong to the State and are not subject to regulation by the State as though they were properties of the State. State control or control through the Endowments Department is a product of the legislative measure, the Act. The Act has mandated through the statutory rules issued in G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08-08-2003 that leases or licenses in respect of immoveable properties of endowments institutions (other than agricultural

lands) should be only by public auction.

If the third respondent has granted a lease or an extension of lease to the petitioner otherwise than by way of public auction, in transgression of Rule 3 of the Rules, the third respondent would be liable to disciplinary action. Any private and unlawful arrangement between the petitioner and the third respondent whereunder the monies offered by the petitioner are accepted by the third respondent and a receipt given would not elevate the clearly illegal occupation by the petitioner of shop No.12 to the status of a lawful lease. To hold otherwise would be to hold that the Executive Officer of Yadagirigutta temple may review, amend or repeal the statutory rules issued by the State Government. This is not the law of the Republic of India, not the received constitutional jurisprudence. The contention of the petitioner must therefore be rejected.

On the aforesaid analysis, the petitioner has no legal foundation or entitlement to assail the impugned public auction notice issued by the third respondent-Devasthanam. The writ petition must, therefore, fail. If the petitioner has any grievance about the unlawful conduct of the third respondent, he is at liberty to complain to the Commissioner of Endowments or the State Government or even to pursue private action against the holder of the office of the third respondent who has unlawfully enticed the petitioner to continue in the property and build up an expectation of permanence of occupation of the property of the third respondent-Devasthanam. The present lawful conduct of the third respondent-Devasthanam, however, cannot be interdicted.

The writ petition is accordingly dismissed. No costs.

GODA RAGHURAM, J

Dated 11-08-2006
ghn